Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-911

EDWARD E. KOEHL, Administrator of the Estate of Carol E. Koehl, Deceased,
HENRY NEUHAUSSER, Administrator of the Estate of Stephen Neuhausser, Deceased,
HENRY NEUHAUSSER, RONALD ISON, EDNA ISON SCOTT, JOHN A. MUSCOVIN, aka JON A. MUSCOVIN, and AMELIA MUSCOVIN,

Petitioners,

v.

UNITED STATES FIRE INSURANCE COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

REPLY BRIEF OF PETITIONERS

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REPLY BRIEF OF PETITIONERS

STATE COURTS MAY NOT INVOKE THE THEORY OF "JUDICIAL DISCIPLINE" OR THE "LAW OF THE CASE RULE" TO DENY PETITIONERS THE RIGHT TO "DUE PROCESS".

Article 6 – The Supremacy Clause Of The United States Constitution Guarantees "Due Process" To A Litigant In A State Court.

In spite of the rather complex facts in this case made necessary by litigation over a period of thirteen years, the issue is clear and concise. The issue raised is the important Constitutional question as to the applicability of the Supremacy Clause of the United States Constitution to state courts. May state courts deny a person "due process of law" by resort to the theory of "judicial discipline" or the "law of the case"?

Petitioners contend that they have a right to "due process" in the state courts, and the Respondent, in effect, says that such rights may be denied because the Trial Court is duty bound to follow the orders of the remand of the State Court of Appeals which is clearly erroneous. In addition, the Court of Appeals cannot extricate itself from its prior erroneous judgment because of the resort to the "law of the case" theory.

There is much to be said for both contentions. It cannot be disputed that there is a great necessity for the applicability of the theory of "judicial discipline". However, such theory assumes that the courts will act properly, or at least within their jurisdiction.

Clearly, in this case the State Trial Court on two occasions, the Court of Appeals on two occasions, and the Supreme Court of the State exceeded their jurisdiction by rendering judgments not based on "due process". In spite of the attempt by Respondent to re-argue the facts, the findings of the Ohio Court of Appeals are clear – that the Trial Court did not accord the Petitioners "due process".

It must also be evident that the Appellate Courts by affirming the judgments of the Trial Court rendered without "due process" were likewise guilty of denying the same Constitutional rights to the Petitioners. This is all there is to the case. The attempt by the Respondent to justify the decisions of the State Courts on the merits is not relevant because such decisions were obiter dictum and beyond the jurisdiction of the State Appellate Courts.

Petitioners were entitled to a trial which was denied to them and the State Court of Appeals so found. The issue must not be confused by the fact that on appeal Petitioners presented their case in the alternative on the merits which is permitted under Ohio law.

Also, the Affidavits of the Respondent before the State Trial Court after remand related only to the issue as to whether

or not the insurance policy had been varied by the oral representations of Respondent's insurance agent.

The law is quite clear. The Constitution of the United States, and not the decisions of the State Courts prevail, *Pennekamp* v. *Florida,* 328 U.S. 331, 345; *Henry* v. *City of Rock Hill,* 376 U.S. 776.

Respectfully submitted,

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